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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON
11 RICHLAND DIVISION

12 UNITED STATES OF AMERICA, : CASE NO.: 4:19-CR-6036-SMJ
13 :
14 v. :
15 : **DEFENDANT’S RESPONSE**
16 : **TO THE GOVERNMENT’S**
17 : **SENTENCING MEMORANDUM**
18 :
19 TRENT DREXEL HOWARD, :
20 :
21 Defendant. :
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1 Defendant Trent Drexel Howard (“Mr. Howard”), by and through Undersigned
2 Counsel, hereby files this Response to the Government’s Sentencing Memorandum
3 and respectfully states the following:

4 I. Restitution and Assessments

5 The Government requests the following amounts of restitution to individuals,
6 presumably pursuant to 18 U.S.C. § 2259:

- 7 • \$5,000 to the “first Series”
- 8 • \$10,000 to the “second Series”

9 (ECF No. 145, p. 11).

1 The Government is also seeking \$5,000 under the JVT A (18 U.S.C. §
2 3014(a)(3) and \$28,000 assessment pursuant to the AVAA (18 U.S.C. § 18 U.S.C. §
3 2259B(b)) (ECF No. 145, p. 12, 15). The total amount requested is \$48,000.¹
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5 A. 18 U.S.C. § 2259

6 18 U.S.C. § 2259(b) states the following:

7 (2) **Restitution for trafficking in child pornography.**--If the
8 defendant was convicted of trafficking in child pornography, the
9 court shall order restitution under this section in an amount to be
10 determined by the court as follows:

11 (A) **Determining the full amount of a victim's losses.**--The court
12 shall determine the full amount of the victim's losses that were
13 incurred or are reasonably projected to be incurred by the victim
14 as a result of the trafficking in child pornography depicting the
15 victim.

16 (B) **Determining a restitution amount.**--After completing the
17 determination required under subparagraph (A), the court shall
18 order restitution in an amount that reflects the defendant's relative
19 role in the causal process that underlies the victim's losses, but
20 which is no less than \$3,000.

21 The Ninth Circuit has directed: “the losses, including ongoing losses, caused
22 by the original abuse of the victim should be disaggregated from the losses caused by
23 the ongoing distribution and possession of images of that original abuse, to the extent
24 possible.” *United States v. Galan*, 804 F.3d 1287, 1291 (9th Cir. 2015). Moreover,

25 ¹ By filing this response, Counsel does not intend to violate any terms of the parties’
26 plea agreement. To the extent that the Court finds any arguments advanced in this
27 response would violate a term of the plea agreement, Counsel respectfully withdraws
28 the respective argument.

1 the Government bears the burden of proving losses for restitution by a preponderance
2 of the evidence. *United States v. Waknine*, 543 F.3d 546, 556 (9th Cir. 2008).

3 In a 2019 case in Oregon, the “first Series” victim similarly requested \$5,000.
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5 The district court noted that according to a Department of Justice database, 21
6 defendants had been ordered to pay the victim \$82,225 and found it reasonable to
7 award the victim \$2,000. *See, United States v. Collier*, No. 3:16-CR-348-SI, 2019
8 WL 6213155, at *5 (D. Or. Nov. 21, 2019). Similar to the Oregon case, the
9 Government here states that only a single image of this victim was found and that
10 there was no evidence that Mr. Howard played any role in the production of the
11 image. For these reasons, Counsel contends that an award of \$3,000 is appropriate
12 (the current minimum amount set by statute).
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15 In a 2019 case in Minnesota, the Government requested \$3,000 for the “second
16 Series” victim and the victim herself requested \$15,000. The district court reasoned:
17 “[The Defendant’s] role in causing [the victim’s] losses is very limited. He received
18 multiple images of [the victim] (13), but he was not involved with producing,
19 reproducing, or distributing any of her images. Considering [the victim’s] significant
20 outstanding losses, but also [the defendant’s] very limited causal role, the Court finds
21 that \$3,000 is an appropriate amount...” *United States v. Erickson*, 388 F. Supp.3d
22 1086, 1093 (D. Minn. 2019). Counsel contends that \$3,000 is the appropriate award
23 to the “second Series” victim in the instant case as well.
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1 B. The JVT

2 18 U.S.C. § 3014 provides, in part: “the court shall assess an amount of \$5,000
3 on any non-indigent person or entity convicted of an offense under... chapter 110
4 (relating to sexual exploitation and other abuse of children)...”
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6 The PSIR states that Mr. Howard does not have the ability to pay a fine within
7 the guidelines range. (ECF No. 147, par. 258-260). As far as Counsel is aware, the
8 only financial account belonging to Mr. Howard which contains funds is the
9 carpenter’s union account, mentioned by the Government in its memorandum. (*See*,
10 ECF No. 145, p. 14). Counsel contends, however, that the amount in the account
11 (approximately \$9,600) does not change the fact that Mr. Howard is indigent. Mr.
12 Howard will likely be subject to restitution and any remaining amounts will quickly
13 dwindle paying for the necessities of life upon release. For these reasons, Counsel
14 contends that an assessment under the JVT is improper.
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18 C. The AVAA

19 18 U.S.C. § 2259A(a)(3) provides, in part: “In addition to any other criminal
20 penalty, restitution, or special assessment authorized by law, the court shall assess...
21 not more than \$50,000 on any person convicted of a child pornography production
22 offense.” Subsection (c) explains: “In determining the amount of the assessment
23 under subsection (a), the court shall consider the factors set forth in sections 3553(a)
24 and 3572.”
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1 As argued in Section (B) above, Mr. Howard's ability to pay is very limited.
2 He will be incarcerated for many years. By the Government's calculations, he would
3 only earn \$2,100 while in the custody of the Bureau of Prisons. And when he is
4 released from custody, he will be elderly, a convicted felon, and subject to sex
5 offender registration requirements. While Mr. Howard intends to find employment
6 and to pay for life's necessities, his ability to pay a significant assessment is
7 speculative and likely not realistic.
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10 Mr. Howard has also agreed to – and intends to – pay restitution to the victims
11 who request it. The Government calls this a “windfall” because more victims have
12 not requested restitution. (ECF No. 145, p. 16, 17). But this is not a windfall. Every
13 case is different, and in this case, only two victims have sought restitution despite
14 others being given the opportunity. This fact is entirely out of Mr. Howard's control
15 and should not be held against him.
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18 Considering Mr. Howard's age upon release and limited ability to pay, Counsel
19 respectfully requests that the Court award restitution to the victims who have
20 requested it in lieu of an assessment under the AVAA.
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This 29th day of December, 2021.

PATE, JOHNSON & CHURCH, LLC

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This 29th day of December, 2021.

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